

**SEVENTH AMENDMENT
TO
PROPERTY DISPOSITION AGREEMENT**

This Seventh Amendment to Property Disposition Agreement (this "***Seventh Amendment***") is dated for reference purposes July 5, 2013, and is made and entered into by and between the CITY OF EVERETT, a municipal corporation of the State of Washington (the "***City***"), and PNW RIVERFRONT, L.L.C., a Washington limited liability company ("***Polygon***" or "***Developer***").

A. The City and OliverMcMillan, LLC, a California limited liability company ("***OM***"), OM Everett, Inc., a Washington corporation ("***OM INC***"), and OMH Transfer Agent, LLC, a Delaware limited liability company ("***OMH***") were parties to that certain Property Disposition Agreement entered into on or about February 21, 2007, and a memorandum of which was recorded under Snohomish County recording number 200805140860, as amended by a First Amendment to Property Disposition Agreement dated September 28, 2007, a Second Amendment to Property Disposition Agreement dated February 20, 2008, a Third Amendment to Property Disposition Agreement dated April 30, 2008, a Fourth Amendment to Property Disposition Agreement dated October 28, 2009, a Fifth Amendment to Property Disposition Agreement dated June 27, 2011 (the "***Fifth Amendment***"), and a Sixth Amendment to Property Disposition Agreement dated July 5, 2013 (the Property Disposition Agreement as amended by all such amendments, the "***PDA***" or the "***Agreement***").

B. Under the Riverfront Assignment and Assumption Agreement dated July 5, 2013 (the "***Assignment Agreement***"), OM, OM INC and OMH assigned to Polygon, and Polygon assumed, all of the rights, obligations, and liabilities of OM, OM INC and OMH under the PDA.

C. The purpose of this Seventh Amendment is (1) to amend the PDA so that it is consistent with the Assignment Agreement and (2) to make certain revisions to the PDA to facilitate residential and commercial project development.

NOW THEREFORE, for and in consideration of the mutual promises as stated herein and for other good and valuable consideration, including consideration to the City for the City's execution of the Assignment Agreement, the receipt and sufficiency of which is hereby acknowledged, the City and Polygon agree as follows:

1. Procedure for Updating of PDA. The City and Polygon acknowledge that many provisions in the PDA were written in 2007 and that some provisions, particularly those defining Minimum Development Elements and Minimum Retail Elements, may require updating in light of market conditions. The purpose of this Section 1 is to provide a mechanism for orderly and good faith consideration of any future proposal that Polygon may have for the updating of PDA provisions.

A. Change Proposal. Polygon may submit a proposal to the City for specific revisions to the PDA. The proposal must be accompanied by an explanation why the proposed revisions are desirable and should include market studies or other back-up documentation.

B. Evaluation of Change Proposal. City staff will in good faith evaluate the change proposal and will notify City Council that a change proposal has been received. If the City engages an outside real estate development consultant to also evaluate the change proposal, the City will notify Polygon and may require that Polygon reimburse the City for the reasonable cost of such consultant's evaluation.

C. Presentation to City Council. After evaluation (and proposed revisions, as necessary) of the change proposal, City staff and Polygon will present the change proposal in the form of an amendment to PDA to the City Council for consideration. If the City Council approves the proposal, which approval is in the City Council's sole discretion, the City and Polygon will execute the PDA amendment.

2. Non-Residential Development. Polygon acknowledges and agrees that commercial and retail development of the Properties is a primary goal. Accordingly, Polygon and the City have agreed to the following provisions in order to facilitate and ensure such development:

A. Main Road.

(1) Initial Main Road Assurance Device.

(a) Procurement. In connection with the transfer of the Properties to Polygon and to secure Polygon's obligations under the PDA for the construction of the Main Road and Wet Utilities, Polygon has secured one of the following (either, an "***Initial Main Road Assurance Device***"): (i) an unconditional and irrevocable letter of credit in favor of the City in a form acceptable to the City at the City's sole discretion in the amount of two million dollars (\$2,000,000) with a bank reasonably acceptable to the City or (ii) a bond in favor of the City in the same amount in a form substantially as attached to this Seventh Amendment as Exhibit 1 and issued by a surety listed in the U.S. Department of Treasury's Listing of Approved Sureties (Department Circular 570) or other surety acceptable to the City in the City's sole discretion, accompanied by a power of attorney for the surety's representative empowered to sign the bond. The Initial Main Road Assurance Device, whether a letter of credit or a bond, must allow the City to draw upon the entire \$2,000,000 in cash if the Initial Main Road Assurance Device is not replaced by the Replacement Date with a Main Road Performance Bond or an Interim Main Road Assurance Device (as such terms are defined below).

(b) Initial Main Road Assurance Device Must Stay In Effect Until Replacement by Main Road Performance Bond or Interim Main Road Assurance Device. The Initial Main Road Assurance Device provided by Polygon must remain in effect until replacement by a Main Road Performance Bond or Interim Main Road Assurance Device (as such terms are defined below). If the Initial Main Road Assurance Device will expire prior to such replacement, then at least ninety (90) days prior to the date of such expiration Polygon shall substitute the Initial Main Road Assurance Device with another Initial Main Road Assurance Device meeting the requirements of Section 2.A(1)(a) above and deliver evidence thereof to the City. Failure to substitute the Initial Main Road Assurance Device and deliver such evidence by such date shall, among other defaults, constitute a default for which City may immediately draw upon and enforce the entire existing Initial Main Road Assurance Device.

(2) Replacement of Initial Main Road Assurance Device.

(a) Approved Design, Estimate, and Schedule. In accordance with the PDA and Development Agreement, Polygon shall design and obtain a construction cost estimate for the Main Road and Wet Utilities, together is a proposed construction schedule. Polygon shall submit such design, construction estimate and schedule to the City for approval, which approval the City will not unreasonably withhold. Upon City approval, such approved design is the "**Approved Design**," such approved estimate is the "**Approved Estimate**," and such approved schedule is the "**Approved Schedule**."

(b) Main Road Performance Bond.

(i) Procurement. Polygon shall replace the Initial Main Road Assurance Device with a payment and performance bond in favor of the City for the construction of the Main Road and Wet Utilities in accordance with the Approved Design and Approved Schedule and in an amount equal to the Approved Estimate in a form reasonably acceptable to the City and issued by a surety listed in the U.S. Department of Treasury's Listing of Approved Sureties (Department Circular 570) or other surety acceptable to the City in the City's sole discretion, accompanied by a power of attorney for the surety's representative empowered to sign the bond (such bond, the "**Main Road Performance Bond**"). Polygon shall complete such replacement no later than September 30, 2015 (the "**Replacement Date**"). Upon such replacement, the Initial Main Road Assurance Device will terminate.

(ii) Must Stay in Effect Until Completion of Main Road. The Main Road Performance Bond must remain in effect until the completion of the Main Road and Wet Utilities. If the Main Road Performance Bond will expire prior to the completion of the Main Road and Wet Utilities, then at least ninety (90) days prior to the date of such expiration Polygon shall substitute the Main Road Performance Bond with another Main Road Performance Bond meeting the requirements of this Section 2.A(2)(b) and deliver evidence thereof to the City. Failure to substitute the Main Road Performance Bond and deliver such evidence by such date shall, among other defaults, constitute a default for which City may immediately enforce the entire existing Main Road Performance Bond. If the Main Road and Wet Utilities are not completed in accordance with the Approved Design, Approved Schedule, and the requirements of the PDA and Development Agreement, then the City may enforce the Main Road Performance Bond to so complete the Main Road and Wet Utilities.

(c) Interim Main Road Assurance Device.

(i) Procurement. If Polygon has not procured a Main Road Performance Bond by the Replacement Date, then Polygon shall replace the Initial Main Road Assurance Device no later than the Replacement Date with one of the following (either, an "**Interim Main Road Assurance Device**"): (1) an unconditional and irrevocable letter of credit in favor of the City in a form acceptable to the City at the City's sole discretion in the amount of four million dollars (\$4,000,000) with a bank reasonably acceptable to the City or (2) a bond in favor of the City in a form substantially as attached to this Seventh Amendment as Exhibit 1 (but with the bond amount revised to \$4,000,000 and with the other provisions of the bond revised as necessary for the specific requirements of the Interim Main Road Assurance Device) and issued

by a surety listed in the U.S. Department of Treasury's Listing of Approved Sureties (Department Circular 570) or other surety acceptable to the City in the City's sole discretion, accompanied by a power of attorney for the surety's representative empowered to sign the bond. The Interim Main Road Assurance Device, whether a letter of credit or a bond, must allow the City to draw upon the entire \$4,000,000 in cash if the Main Road and Wet Utilities are not completed by the Final Completion Date in accordance with the requirements of the PDA and Development Agreement, in which case the City shall complete the Main Road and Wet Utilities with the location, design and construction of such completion work at the City's sole discretion and schedule.

(ii) Replacement by Main Road Performance Bond. Polygon may replace the Interim Main Road Assurance Device with a Main Road Performance Bond. Upon such replacement, the Interim Main Road Assurance Device terminates.

(iii) Must Stay In Effect Until Replacement By Main Road Performance Bond or Until Completion of Main Road. The Interim Main Road Assurance Device must remain in effect until it is replaced by a Main Road Performance Bond or until the completion of the Main Road and Wet Utilities, whichever is earlier. If the Interim Main Road Assurance Device will expire prior to such replacement or completion, then at least ninety (90) days prior to the date of such expiration Polygon shall substitute the Interim Main Road Assurance Device with another Interim Main Road Assurance Device meeting the requirements of Section 2.A(2)(c)(i) above and deliver evidence thereof to the City. Failure to substitute the Interim Main Road Assurance Device and deliver such evidence by such date shall, among other defaults, constitute a default for which City may immediately draw upon and enforce the entire existing Interim Main Road Assurance Device.

(d) Section 16.4 of the PDA/Initial Residential Phase. The City and Polygon agree that either a Main Road Performance Bond or an Interim Main Road Assurance Device procured and maintained in accordance this Section 2.A(2) is an "assurance device reasonably acceptable to the City" under Section 16.4 of the PDA that will allow Polygon to construct housing beyond the Initial Residential Phase. The City and Polygon agree that the Initial Main Road Performance Bond by itself is not an "assurance device reasonably acceptable to the City" under Section 16.4 of the PDA that would allow Polygon to construct housing beyond the Initial Residential Phase.

B. City Council Briefings. Beginning third quarter of 2013, Polygon shall present quarterly or twice-annually briefings to the City Council, in conjunction with the quarterly reports required under Section 16.11 of the PDA, regarding the progress of non-residential development of the Properties. These briefings should include, at appropriate times, information regarding the state of the current retail market, information regarding progress regarding tenants and concepts regarding the proposed development of the retail portions of the Properties, conceptual layouts of the retail portions of the Properties, introductions to key Polygon personnel and consultants, and introductions to prospective Commercial Partners (as defined below). The purpose of these briefings is to inform the City Council and the community regarding the development of the Properties and Polygon's current views about such development, in addition to establishing a background for Development Proposals (as defined below) and for any change proposals to the PDA under Section 1 above.

C. Proposals for Non-Residential Development. The City and Polygon acknowledge that Sections 16.3.1 and 16.2.3(d) of the Agreement provide for approval(s) by the City of Minimum Retail Element and Mill Site Development proposals (each a “***Development Proposal***”). The purpose of this Section 2.C is to supplement those sections of the PDA.

(1) Commercial Partners. The City acknowledges that Polygon intends to enter into agreements with one or more retail or commercial developers for the purpose of the non-residential development of the Properties (such a developer, a “***Commercial Partner***”). Accordingly, a Development Proposal containing non-residential development must include, in addition to other proposal elements required in the PDA, an identification of the Commercial Partner that will undertake the development described in the proposal. Polygon acknowledges and agrees that, among the other instances where it may be reasonable for the City to reject a Development Proposal, it will be reasonable for the City to reject a Development Proposal in which Polygon does not demonstrate that (a) the identified Commercial Partner has previously completed retail developments of similar size, scale, quality and character as the development described in the Development Proposal; (b) the identified Commercial Partner has the financial capacity to finance and execute such development; or (c) the identified Commercial Partner is ready and has the capacity to implement such development in accordance with the timelines in the Development Proposal. The City acknowledges and agrees that there may be some circumstances under which a Commercial Partner may not be necessary for a Development Proposal. If Polygon believes such circumstances exist, Polygon may request from the City a waiver of the requirement for the identification of a Commercial Partner, with the granting of such waiver at the City’s sole discretion.

(2) Approved Development Proposal as Condition of all City Permits. Polygon acknowledges and agrees that compliance with an approved Development Proposal will be a condition included in every permit issued by the City in connection with the development described in an approved Development Proposal, including without limitation all site preparation permits and all building permits.

(3) Amendment of Approved Proposals. Polygon shall keep the City up-to-date on the progress of development pursuant to an approved Development Proposal. In addition, the City acknowledges that approved Development Proposals may require amendment from time to time. If Polygon desires to amend an approved Development Proposal, Polygon shall submit the amendment to the City for approval, which will not be unreasonably withheld. Polygon acknowledges and agrees that, among the other instances where it may be reasonable for the City to reject an amendment, it will be reasonable for the City to reject an amendment that would cause the Development Proposal as amended to not satisfy PDA requirements for Development Proposals.

(4) Deadline for Minimum Retail Element Proposal. Polygon shall submit a complete Minimum Retail Element proposal no later than March 31, 2015. If Polygon believes it will be unable to submit the proposal on such date, Polygon shall use its best efforts to notify the City as soon as practically possible. If Polygon is unable to submit the proposal by March 31, 2015, Polygon shall instead be available to present a comprehensive briefing to City Council describing the reasons why such date is no longer appropriate and proposing a new deadline date.

3. Deadline for Initial Phase of Residential Development. No later than six (6) months after the date of this Seventh Amendment, Polygon shall submit to the City a complete subdivision application for the entire Simpson Pad together with complete application for other land use permits necessary in connection with such complete subdivision application (such subdivision application and such other land use permits collectively, the “**Subdivision Application**”). No later than twenty-four (24) months after the approval of the Subdivision Application and the expiration of all appeal periods without appeal therefrom or the resolution of all such appeals in a manner that substantially affirms the approved Subdivision Application (the “**Residential Infrastructure Deadline**”), Polygon shall substantially complete to applicable City standards the construction of roads, utilities and other infrastructure improvements to serve at least one hundred (100) single family residences on the Simpson Pad. If the Subdivision Application is not submitted by six (6) months after the date of this Seventh Amendment or if such improvements are not substantially complete by the Residential Infrastructure Deadline, the City may, in addition to any other remedy it may have under this Agreement or applicable law, draw on and enforce the entire Main Road Assurance Device, in which case the right and obligation to construct the Main Road shall become the sole right and obligation of the City, with the location, design and construction of the Main Road at the City’s sole discretion and schedule.

4. Connectivity, Public Access, and Wetland C Enhancements.

A. Connectivity and Public Access Enhancements. Polygon and City agree that completion of trail connectivity and public access would be of great benefit to overall development.

(1) Project Under Construction. The City shall substantially complete at the City’s sole cost no later than December 31, 2013 the “Railroad Corridor Trail & Enhanced Drainage Channel Project,” the construction of which was awarded by City Council to KLB Construction, Inc. on January 9, 2013 (the “**City 2013 Corridor Project**”). As part of this project, the City’s contractor will construct a gravel trail along the railroad corridor.

(2) Paving of Railroad Corridor Trail. Except as otherwise provided in this Section 4.A(2), Polygon at its own cost shall complete all work necessary to pave the gravel trail built by the City’s contractor in the City 2013 Corridor Project. This Polygon work will include placement of 3300 linear feet of hot mix asphalt three inches thick with a four-inch base of crushed surfacing material, all generally in accordance with the site plan and site construction details from the City 2013 Corridor Project attached to this Amendment as Exhibit 2 (all such paving work, the “**Corridor Paving Project**”). The City shall procure at the City’s cost all necessary permits and complete any additional design necessary for the Corridor Paving Project. Polygon shall commence the Corridor Paving Project no later than twelve (12) months after receipt from the City of the final design and all necessary permits, and Polygon shall complete the Corridor Paving Project no later than twelve (12) months after such commencement. However, if Polygon determines that it does not desire to complete the Corridor Paving Project, Polygon may pay the City one hundred and fifty thousand dollars (\$150,000) no later than thirty (30) days after receipt of the final design and permits from the City. Upon such payment, (i) Polygon has no further obligation to complete the Corridor Paving Project and (ii) the City shall commence the Corridor Paving Project no later than twelve (12) months after receipt of the \$150,000 and the completion of final design and procurement of all necessary

permits, and the City shall complete the Corridor Paving Project no later than twelve (12) months after such commencement.

(3) Relocation of Trail Segment on North Part of Riverfront Trail.

Polygon acknowledges that Polygon is obligated to relocate the north end of the Riverfront Trail pursuant to "Parks and Recreation B" of Attachment I to the Development Agreement dated June 2, 2009. This includes an interim trail as necessary and a permanent relocated trail constructed as a twelve-foot wide multi-use trail, with final design as approved by the City Engineer. Regardless of the "implementation time frame" in "Parks and Recreation B," Polygon shall complete the permanent relocated trail at its own cost by December 31, 2015 or the Residential Infrastructure Deadline, whichever is earlier.

(4) Mill Site Trail. Polygon acknowledges that Polygon is obligated to construct a permanent trail and buffer on the Mill Site pursuant to "Parks and Recreation D" of Attachment I to the Development Agreement dated June 2, 2009. The trail, as described in the Riverfront Development Public Amenities Master Plan approved by City Council on March 31, 2010 (the "**Master Plan**"), will be a paved connector trail eight to ten feet wide with two foot shoulders on each side. The buffer will be a fifty-foot buffer, with the trail located within the buffer. Regardless of the "implementation time frame" in "Parks and Recreation D," Polygon shall complete the trail and buffer at its own cost by December 31, 2015 or the Residential Infrastructure Deadline, whichever is earlier.

(5) Group Picnic Shelter and Access. Except as otherwise provided in this Section 4.A(5), Polygon at its own cost shall complete all work necessary to construct a group picnic shelter along the Riverfront Trail near the Simpson Pad as generally shown on page 41 of the Master Plan (the "**Picnic Shelter Project**"). The City shall procure at the City's cost all necessary permits and complete the final design for the Picnic Shelter Project. Polygon shall commence the Picnic Shelter Project no later than twelve (12) months after receipt from the City of the final design and all necessary permits, and Polygon shall complete the Picnic Shelter Project no later than twelve (12) months after such commencement. However, if Polygon determines that it does not desire to complete the Picnic Shelter Project, Polygon may pay the City two hundred thousand dollars (\$200,000) no later than thirty (30) days after receipt of the final design and permits from the City. Upon such payment, (i) Polygon has no further obligation to complete the Picnic Shelter Project and (ii) the City shall commence the Picnic Shelter Project no later than twelve (12) months after receipt of the \$200,000 and the completion of final design and procurement of all necessary permits, and the City shall complete the Picnic Shelter Project no later than twelve (12) months after such commencement.

(6) Realignment of Trail Segment on Northeast Part of Riverfront Trail and Shoreline Restoration. Except as otherwise provided in this Section 4.A(6), Polygon at its own cost shall complete all work necessary to realign approximately 500 to 600 linear feet of Riverfront Trail, to add a new culvert under the old trail, and to re-grade the old trail and restore with native planting, all as generally shown on page 15 of the Master Plan (collectively, the "**Northeast Relocation Project**"). The City shall procure at the City's cost all necessary permits and complete the final design for the Northeast Relocation Project. Polygon shall commence the Northeast Relocation Project no later than twelve (12) months after receipt from the City of the final design and all necessary permits, and Polygon shall complete the Northeast Relocation

Project no later than twelve (12) months after such commencement. However, if Polygon determines that it does not desire to complete the Northeast Relocation Project, Polygon may pay the City two hundred thousand dollars (\$200,000) no later than thirty (30) days after receipt of the final design and permits from the City. Upon such payment, (i) Polygon has no further obligation to complete the Northeast Relocation Project and (ii) the City shall commence the Northeast Relocation Project no later than twelve (12) months after receipt of the \$200,000 and the completion of final design and procurement of all necessary permits, and the City shall complete the Northeast Relocation Project no later than twelve (12) months after such commencement.

(7) 41st Street Trail Intersection. Except as otherwise provided in this Section 4.A(7), Polygon at its own cost shall complete all work necessary to construct the 41st Street Trail Intersection, as generally shown on page 15 of the Master Plan and also as shown in sheets L1.1 and L2.1.7 in the plan set entitled "Riverfront Development – Public Amenities" (60% Design) (the "**Intersection Project**"). The City shall procure at the City's cost all necessary permits and complete the final design for the Intersection Project. Polygon shall commence the Intersection Project no later than twelve (12) months after receipt from the City of the final design and all necessary permits, and Polygon shall complete the Intersection Project no later than twelve (12) months after such commencement. However, if Polygon determines that it does not desire to complete the Intersection Project, Polygon may pay the City fifty thousand dollars (\$50,000) no later than thirty (30) days after receipt of the final design and permits from the City. Upon such payment, (i) Polygon has no further obligation to complete the Intersection Project and (ii) the City shall commence the Intersection Project no later than twelve (12) months after receipt of the \$50,000 and the completion of final design and procurement of all necessary permits, and the City shall complete the Intersection Project no later than twelve (12) months after such commencement.

B. Wetland C Enhancements. Polygon and the City acknowledge that completion of certain wetland enhancements is required in connection with the development of the Simpson Pad. Draft plan sheets for these enhancements are shown in sheets C3.6 and W2.1 through W3.1 of the plan set entitled "Riverfront Development – Public Amenities" (60% Design) (the "**Wetland C Enhancements**"). The City shall procure at the City's cost all necessary permits and complete the final design for the Wetland C Enhancements. After procurement of all permits and completion of the final design, the City shall give notice to Polygon. Within thirty (30) days after receipt of such notice, Polygon shall pay to the City two hundred seventy-five thousand dollars (\$275,000). The City shall commence the Wetland C Enhancements no later than twelve (12) months after receipt of the \$275,000, and the City shall complete the Wetland C Enhancements no later than twelve (12) months after such commencement.

5. Riverfront Development Public Amenities Master Plan. Section 18.1(h) of the Original PDA and Section 18.1(i) as amended by Fifth Amendment Section 8 are hereby deleted. Unless otherwise to be completed by Polygon pursuant to Section 4 above or pursuant to Polygon's obligations under Attachment I to the Development Agreement dated June 2, 2009, the City shall complete the improvements contained in the Master Plan as follows:

A. Railroad Corridor Remaining Improvements. The City shall complete all remaining railroad corridor improvements as described in the Master Plan (the “**Remaining Railroad Corridor Improvements**”). As of the date of this Seventh Amendment: (i) Polygon has reviewed the City’s 60% design for the Remaining Railroad Corridor Improvements contained in the plan set entitled “Riverfront Development – Public Amenities” (60% Design), and Polygon agrees that such design is in accordance with the Master Plan; (ii) Polygon acknowledges that the City has not yet made any application for required non-City approvals for the Remaining Railroad Corridor Improvements; and (iii) Polygon and City agree that, while the final design of the Remaining Railroad Corridor Improvements is the sole responsibility of City and such final design may differ from the 60% design, the City will provide Polygon a reasonable opportunity for review and comment. The City shall commence the Remaining Railroad Corridor Improvements within twelve (12) months after the later of (1) the date on which the City has obtained the required non-City governmental approvals, which the City agrees to use reasonably diligent efforts to obtain and (2) the date on which the City has received sufficient state, federal or other third-party funding for the Remaining Railroad Corridor Improvements. The City shall substantially complete the Remaining Railroad Corridor Improvements within twelve (12) months after such commencement.

B. Three-Acre Park. The City shall complete the three-acre park improvements as described in the Master Plan (such improvements, the “**Park Improvements**”). As of the date of this Seventh Amendment: (i) Polygon has reviewed the City’s 60% design for the Park Improvements contained in the plan set entitled “Riverfront Development – Public Amenities” (60% Design), and Polygon agrees that such design is in accordance with the Master Plan; (ii) Polygon acknowledges that the City has not yet made any application for required non-City approvals for the Park Improvements; and (iii) Polygon and City agree that, while the final design of the Park Improvements is the sole responsibility of City and such final design may differ from the 60% design, the City will provide Polygon a reasonable opportunity for review and comment. The City shall commence the Park Improvements within twelve (12) months after the later of (1) the date on which the City has obtained the required non-City governmental approvals, which the City agrees to use reasonably diligent efforts to obtain and (2) the date on which the City has received sufficient state, federal or other third-party funding for the Park Improvements. The City shall substantially complete the Park Improvements within twelve (12) months after such commencement.

C. Early Phase Wetland Restoration. The City shall complete the work described in the Master Plan relating to the South Wetland Complex and Bigelow Creek, including the water quality improvement facility (all such work, “**Early Phase Wetland Restoration**”). The City agrees to use reasonably diligent efforts to obtain the required non-City governmental approvals for the Early Phase Wetland Restoration. Whenever the City receives the required non-City governmental approvals for a portion of the Early Phase Wetland Restoration and the City receives sufficient state, federal or other third-party funding to complete such portion, the City shall then commence work on that portion within twelve (12) months after receipt of such approvals and funding and shall substantially complete that work within twelve (12) months thereafter. As of the date of this Seventh Amendment: (i) the City is re-evaluating the City’s 60% design of the Early Phase Wetland Restoration contained in the plan set entitled “Riverfront Development – Public Amenities” (60% Design) and is evaluating alternative approaches; (ii) Polygon acknowledges that the City has not yet made any application for

required non-City approvals for any such work and the City has not yet received any funding for any such work; and (iii) Polygon and City agree that, while the final design of the Early Phase Wetland Restoration is the sole responsibility of City and such final design may differ from the 60% design, the City will provide Polygon a reasonable opportunity for review and comment.

D. Completion of Remaining Projects. The City shall complete the remaining work described in the Master Plan that is not referenced in Sections 4 A-C above (all such remaining work, "**Later Phase Projects**"). The City agrees to use reasonably diligent efforts to obtain the required non-City governmental approvals for the Later Phase Projects. Whenever the City receives the required non-City governmental approvals for a portion of the Later Phase Projects and the City receives sufficient state, federal or other third-party funding to complete such portion, the City shall then commence work on that portion within twelve (12) months after receipt of such approvals and funding and shall substantially complete that work within twelve (12) months thereafter. As of the date of this Seventh Amendment: (i) Polygon acknowledges that the City has not yet made any application for required non-City approvals for any such work and the City has not yet received any funding for such work; and (ii) Polygon and City agree that, while the design of the Later Phase Projects is the sole responsibility of City, the City will provide Polygon a reasonable opportunity for review and comment.

E. Coordination of Work. The City and Polygon acknowledge and agree that completion of the improvements in this Section 5 will require coordination with other work in developing the Properties, including without limitation coordination with respect to timing and sequencing of project construction. The City and Polygon will cooperate and accommodate each other in good faith regarding the improvements and will not unreasonably withhold consent to changes to this Seventh Amendment regarding such improvements, so long as the changes still result in improvements in accordance with the Master Plan.

6. Sewer Improvements. The City and Polygon acknowledge and agree that the preliminary design report by BHC Consultants, LLC dated May 2009 contains the preliminary design for the sewer improvements required under the PDA (such report, the "**Preliminary Design Report**"). In order to provide greater precision regarding the sewer improvements, Original PDA Section 18.1(g), Third Amendment Sections 22(g) and 22(h), Fourth Amendment Section 1.f, and Fifth Amendment Section 7 are hereby deleted in their entirety and replaced with the following:

Sanitary Sewer/Stormwater Sewer System. The City shall substantially complete the sewer, stormwater and related improvements marked as "by City" as generally depicted on the drawings attached as Exhibit 3 to this Seventh Amendment (these improvements, the "**Sewer and Stormwater Improvements**"). The City shall complete such improvements as follows:

a. Landfill Pad Improvements. At such time that Developer commences development of the Landfill Pad in accordance with the PDA, Developer shall use commercially reasonable judgment to determine on what date such development will require the substantial completion of Sewer and Stormwater Improvements serving the Landfill Pad (this date, the "**Landfill Deadline**"). When Developer determines the Landfill Deadline, Developer shall deliver a notice to the City stating the Landfill

Deadline (the "***Landfill Notice***"). The City shall substantially complete the Sewer and Stormwater Improvements serving the Landfill Pad by the later of (1) the Landfill Deadline or (2) the date that is twenty (20) months after delivery of the Landfill Notice. Developer and City acknowledge and agree that, if the Landfill Pad is developed in phases, it may be commercially reasonable to also phase the construction of the Sewer and Stormwater Improvements serving the Landfill Pad, in which case Developer shall deliver to the City a Landfill Notice containing a Landfill Deadline for each phase.

b. Simpson Pad Improvements. At such time that Developer commences development of the Simpson Pad in accordance with the PDA, Developer shall use commercially reasonable judgment to determine on what date such development will require the substantial completion of the Sewer and Stormwater Improvements serving the Simpson Pad (this date, the "***Simpson Deadline***"). When Developer determines the Simpson Deadline, Developer shall deliver a notice to the City stating the Simpson Sewer Deadline (the "***Simpson Notice***"). The City shall substantially complete the Sewer and Stormwater Improvements serving the Simpson Pad by the later of (1) the Simpson Deadline or (2) the date that is eighteen (18) months after delivery of the Simpson Notice. Developer and City acknowledge and agree that, if the Simpson Pad is developed in phases, it may be commercially reasonable to also phase the construction of the Sewer and Stormwater Improvements serving the Simpson Pad, in which case Developer shall deliver to the City a Simpson Notice containing a Simpson Deadline for each phase.

c. Right of Early Completion. The notice and deadline procedures above for the Sewer and Stormwater Improvements are not intended to hinder the City from completing Sewer and Stormwater Improvements prior to such notices or deadlines. The City may commence or complete all or a portion of the Sewer and Stormwater Improvements prior to such notices or deadlines at such times as the City deems appropriate in its discretion.

d. Right of Entry. The parties acknowledge that in connection with the development of the Simpson Pad, the parties may be required to construct certain sewer and stormwater improvements on the Landfill Pad, which will serve the Simpson Pad. Developer agrees to grant to the City the right to enter upon the Landfill Pad for the purpose of constructing, operating, and maintaining such improvements. Upon completion, the improvements shall be dedicated to the City at the direction of the City. The City shall have the right, at its discretion, to grant to Developer's mortgage lender, its successor in interest, or other third party the right to enter upon the Landfill Pad for the purpose of constructing, operating, and maintaining the improvements and the Developer hereby confirms that it has granted the City such right.

7. LFG Easement. The parties acknowledge that the LFG blower constructed as part of the City's Roundabout and 41st Street Extension project is located on Polygon property. The parties acknowledge that the City will be constructing other improvements related to the landfill gas management system. Within thirty (30) days after written request from the City, Polygon shall fully execute an amendment to the Grant of Easement for Existing Landfill Systems and Related Utilities dated May 14, 2008 and recorded under Snohomish County recording number 200805140923. Such amendment will be substantially in the form attached to this Seventh

Amendment as Exhibit 4, and the City shall provide at the City's sole cost the legal description(s) matching the drawings in Exhibit 4 necessary for such amendment.

8. Other Revisions to PDA.

A. Section 19.11 (Committee Structure). PDA Section 19.11 is hereby updated to include the following persons:

- Authorized Representatives: Chief Administrative Assistant for City; Nick Abdelnour for Polygon
- Operating Committee: Dave Davis for City; Nick Abdelnour for Polygon
- Steering Committee: Chief Administrative Assistant for City; Nick Abdelnour for Polygon

B. Section 20.1 (Notices). Notice addresses for the parties are revised as follows:

To City: City of Everett
2930 Wetmore Ave. Ste. 10-C
Everett, WA 98201
Attention: City Attorney

To Polygon: PNW Riverfront, LLC
Nick Abdelnour
11624 SE 5th Street, Suite 200
Bellevue, WA 98005

C. Polygon Principals. Polygon warrants that Jeffery Gow and Gary Young (the "**Polygon Principals**") own a majority ownership interest in Polygon and have primary management and day-to-day operational control of Polygon.

D. Assignment. Section 14.1 of the PDA is deleted. Section 20.5 of the PDA is revised as follows, with underlined portions added and strikethrough portions deleted:

Except as otherwise provided herein, the City shall not have the right to assign or transfer this Agreement or any of its rights hereunder. ~~After Closing~~ OM Polygon shall not have the right to assign or transfer this Agreement or any of its rights or obligations hereunder without the express prior written consent of the City, which may be withheld in its sole and absolute discretion; provided, however, that ~~OM Polygon~~ shall have the right, upon written notice (but without any requirement for prior consent), to assign its rights under this Agreement to an Affiliated Polygon Entity (as defined below) so long as the Affiliated Polygon Entity assumes

in writing all of the obligations and liabilities of ~~OM~~ Polygon under this Agreement. ~~OM~~ Polygon shall also have the right, notwithstanding the foregoing, to assign its rights to a recognized financial institution for security purposes in connection with a loan the proceeds of which will be used exclusively for the Development; provided, however, the lender or trustee in any such assignment shall not be released or relieved of the obligation to obtain the City's prior written consent to any subsequent sale, assignment or conveyance of such rights, whether through a foreclosure or otherwise, provided that ~~and~~ no right transferred under any such sale, assignment or conveyance shall be exercised unless and until the holder of the rights assumes in writing all of the obligations of ~~OM~~ Polygon hereunder. Any assignment, whether or not the consent of the City is required, shall be subject to all the provisions, terms, covenants and conditions of this Agreement; the assignee shall jointly and severally assume in writing the obligations of ~~OM~~ Polygon hereunder unless the assignment is only for security purposes; ~~OM~~ and Polygon shall, in any event, continue to be and remain liable under this Agreement, as it may be amended from time to time, with or without notice to ~~OM~~ Polygon. Polygon acknowledges that continued controlling ownership in the Development by the Polygon Principals is important and critical to the City, and accordingly for the purposes of this Agreement an "Affiliated Polygon Entity" shall mean a corporation, partnership, limited liability company or other entity in which the Polygon Principals collectively have, until the Minimum Development Elements have been completed and a Final Certificate of Completion has been issued, a majority ownership interest together with primary management and day-to-day operational control of such entity and of the Development. Further, the parties agree that, among the other instances that may constitute an assignment or transfer of this Agreement, any transaction or event that causes the Polygon Principals to not have such majority ownership interest in or management and control of Polygon or of any entity to which this Agreement was assigned or transferred that was formerly an Affiliated Polygon Entity shall be deemed an assignment and transfer of this Agreement.

E. Development Agreement Coordination with PDA. The parties acknowledge and agree that Exhibit G to the PDA is outdated and has been superseded in many respects by the Development Agreement. Accordingly, Exhibit G is hereby deemed amended so that it is consistent with the Development Agreement. Further, the parties agree that the deadline date for the Final Development Plan (as defined in the Development Agreement) is hereby adjusted to be consistent with this Seventh Amendment, so that the Final Development Plan is now due no later than March 31, 2015. Lastly, the parties agree that the descriptions of the Main Road in Section 16.4 of the PDA and page G-5 of Attachment G of the Development Agreement are meant to be read cumulatively, and in the case of direct contradiction between the two descriptions, the Development Agreement shall govern.

F. Insurance.

(1) Umbrella and Excess Liability Insurance. Section 19.1.5(iii) of the PDA is deleted and replaced with the following:

Umbrella and Excess Liability:

\$10,000,000 per occurrence & aggregate per location, which applies to the underlying insurance described in Section 19.1.5(i), (ii), (iv) and (v), but may be satisfied for each coverage by combination of the underlying coverage and the umbrella coverage.

(2) Professional Liability Insurance. Section 19.1.5(vi) of the PDA is deleted and replaced with the following:

Professional Liability Insurance:

\$1,000,000 each claim and annual aggregate, but only required in the event that Polygon itself undertakes design, architecture, engineering or other professional work customarily requiring professional liability insurance, in which case Polygon shall procure such insurance prior to beginning such professional work.

9. Capitalized Terms. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in the PDA.

10. Other. Except as expressly modified in this Seventh Amendment, the PDA shall remain in full force and effect and the parties hereto acknowledge, confirm and ratify all of the terms and conditions of the PDA.

EXECUTED as of the date first above written by duly authorized officers of the parties hereto, intending to be legally bound hereby.

[SIGNATURE PAGE FOLLOWS]

CITY:

CITY OF EVERETT

By: Ray Stephanson
Ray Stephanson, Mayor

ATTEST:

By: Sharon Fuller
Sharon Fuller, City Clerk

APPROVED AS TO FORM:

By: James D. Iles
James D. Iles, City Attorney

POLYGON:

PNW RIVERFRONT, L.L.C.
a Washington limited liability company

By: PNW HOMEBUILDERS NORTH, L.L.C.
a Washington limited liability company
Its: Manager

By: PNW HOME BUILDERS, L.L.C.
a Washington limited liability company
Its: Sole Member

By: PNW HOME BUILDERS GROUP, INC.,
a Washington corporation
Its: Manager

By: 
GARY A. YOUNG
Its: Executive Vice President

EXHIBIT 1
TO SEVENTH AMENDMENT TO PDA
[FORM OF BOND]

CITY OF EVERETT

ROADWAY, UTILITIES, AND LANDSCAPE PERFORMANCE BOND

Bond No. 1083968

KNOW ALL MEN BY THESE PRESENTS: That we, PNW Riverfront, LLC as Principal, and Lexon Insurance Company, as Surety, are held and firmly bound unto the City of Everett in the full sum of Two Million Dollars (\$2,000,000), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firm by these presents.

WHEREAS, the conditions of this obligation are such that the Principal has entered or will enter into an agreement in writing with the City of Everett, dated July 3, 2013 (the "Assignment") relating to the following project (the "Project") under which certain rights and obligations arising under the Property Disposition Agreement entered into on or about February 21, 2007 (as amended, the "Agreement") are assigned to Principal:

Permit No.:

Project Name: Everett Riverfront Redevelopment
Main Road Construction through Landfill Pad

WHEREAS, the terms, conditions and covenants specified in said Agreement, including all of the contract documents therein referred to or arising out of said Agreement or otherwise relating to the Project, are hereby referred to and made a part hereof as fully and completely as though set forth in detail herein;

NOW, THEREFORE, as provided in the Agreement, this bond is an Initial Main Road Assurance Device. If the Principal fails to replace this bond with a Main Road Performance Bond or an Interim Main Road Assurance Device by the Replacement Date (which date is no later than September 30, 2015), as such capitalized terms are defined in the Seventh Amendment to the Agreement, then upon delivery to Surety of a notice from the City stating the following:

"Principal has failed to fulfill all of its obligations under the Agreement to replace Bond No. 1083968 issued by Lexon Insurance Company, as "Surety" with a Main Road Performance Bond or an Interim Main Road Assurance Device by the Replacement Date, and we hereby demand payment thereunder."

the Surety shall deliver to the City, at such place as the City shall direct in such request, the full sum of Two Million Dollars (\$2,000,000), in lawful money of the United States in immediately available funds, within 30 days after receipt by HUB International as agent for Lexon Insurance Company of such request at 12100 NE 195th Street, #200, Bothell, WA 98011, and payment in full of such sum to the City shall constitute full satisfaction of the Surety's obligations under this bond. This bond shall remain in full force and effect and may not be terminated by the Principal or the Surety, until the earlier of (i) the Principal's replacement of this bond by a Main

Road Performance Bond or an Interim Main Road Assurance Device, or (ii) receipt by the City of the full sum of Two Million Dollars (\$2,000,000), in lawful money of the United States, from the Surety. All charges, costs, fees and expenses relating to this bond will be paid by the Principal and the City will not be liable for any of those items. The venue for any action on this bond shall be in Snohomish County Superior Court in Snohomish County, Washington.

IT IS FURTHER DECLARED AND AGREED that nothing of any kind or nature whatsoever that will not discharge the Principal shall operate as a discharge or a release of liability of the Surety, any law, rule or equity or usage relating to the liability of sureties to the contrary notwithstanding, and the Surety waives notice of any alteration, or extension of time, made by the City and will remain obligated on this bond, as provided herein after any such alteration or extension.

SIGNED AND SEALED this 3rd day of July, 2013.

Principal: PNW Riverfront, LLC

Surety: Lexon Insurance Company

By: _____
Thomas C. Landschulz
Title: Vice President of Finance

By: _____
James I. Moore
Title: Attorney-In-Fact

Address: 11624 SE 5th. Street Ste. 200

Address: 12890 Lebanon Road

City/Zip: Bellevue, WA 98005

City/Zip: Mt. Juliet, TN 37122

Phone: (425) 586-7700

Phone: 800-962-5212

Approved as to Form

By: _____
James D. Iles, City Attorney

Approved:

By: _____
Ray Stephanson, Mayor

By: _____
Sharon Fuller, City Clerk

STATE OF WASHINGTON)
)ss
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the _____ of _____ to be free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____
 (Signature) (Print Name: _____)

NOTARY PUBLIC in and for the State of Washington, residing at _____
My appointment expires _____

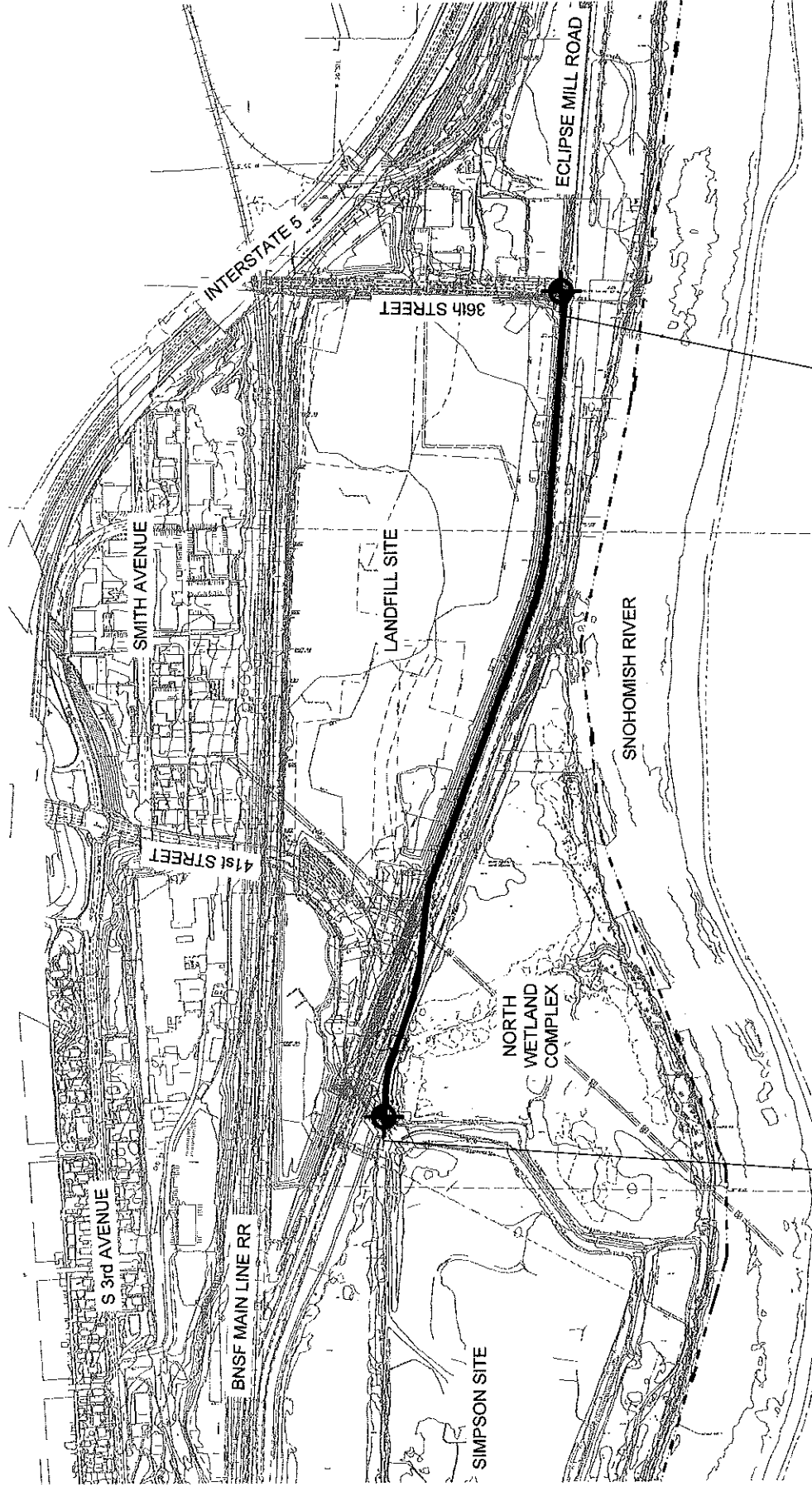
STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)

I certify that I know or have satisfactory evidence that James I. Moore is the person who appeared before me, and said person acknowledged that he/she signed this instrument on oath stated that (he/she) was authorized to execute the instrument an acknowledge it as the Attorney-In-Fact of Lexon Insurance Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: July 3, 2013 _____
 (Signature) (Print Name: Tariese M. Pisciotto)

NOTARY PUBLIC in and for the State of Washington, residing at Westmont, IL 60559
My appointment expires 6/26/2014

EXHIBIT 2
TO SEVENTH AMENDMENT TO PDA
[CORRIDOR PAVING PROJECT]



BEGIN PROJECT

END PROJECT
APPROX. 3400 LF

NO.	DATE	APPROD.	REVISION	PLANS ISSUED FOR	AS-BUILT
1				CONSTR.	
DATE	APPROD.	ACTION	DATE	APPROD.	ACTION

**MacLeod
Reckord** PLLC
Landscape Architects & Planners
Cohen Building
81 Market Street
Everett, WA 98201
206-333-7118
FAX 206-333-4242

Designed By: [Signature]
Approved By: [Signature]
P.O. No.:
Date:

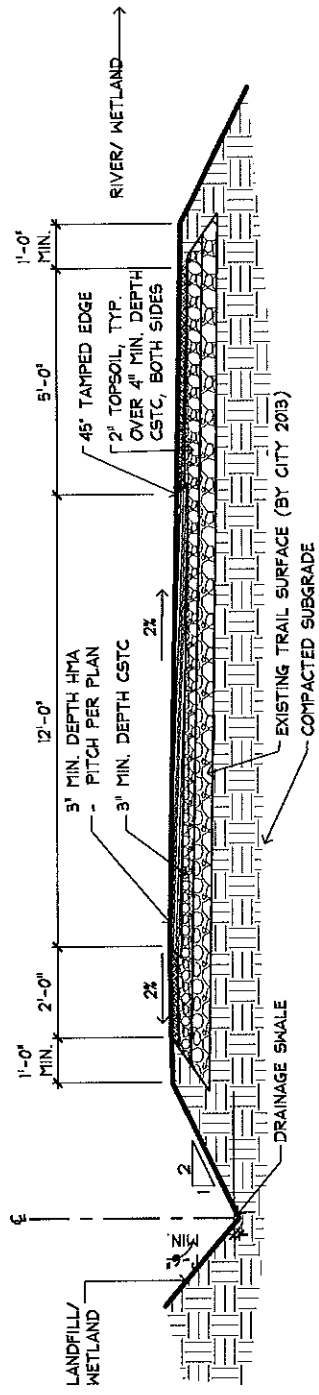


**CITY OF EVERETT
PUBLIC WORKS**
EVERETT
**ENGINEERING & PUBLIC
SERVICES DEPARTMENT**

RIVERFRONT DEVELOPMENT
RAILROAD CORRIDOR TRAIL

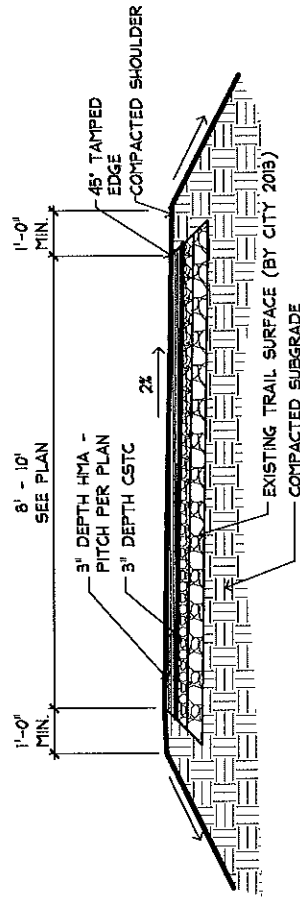
SITE PLAN

Drawing No.:
Sheet No.:
Date:



* NOTE SUBGRADE CONDITIONS MAY INCLUDE NATIVE SOIL, CSBG, OR CSTC. DEPTH OF IMPORTED MATERIAL MAY BE ADJUSTED TO COMPENSATE FOR SETTLEMENT.

(A) RAILROAD CORRIDOR TRAIL - SOUTH END
1/4" = 1'-0"



(B) RAILROAD CORRIDOR TRAIL - NORTH END
1/4" = 1'-0"

1 TRAIL SECTIONS
AS NOTED

NO.	DATE	REVISION	BY	CHKD.	DATE	APPROVED FOR	DATE	APPROVED ACTION
1								

MacLeod Reckord PLLC
Landscape Architects & Planners
Cortina Building
911 Main Street
Burlington, VT 05401
802.253.7919
FAX 802.253.7922



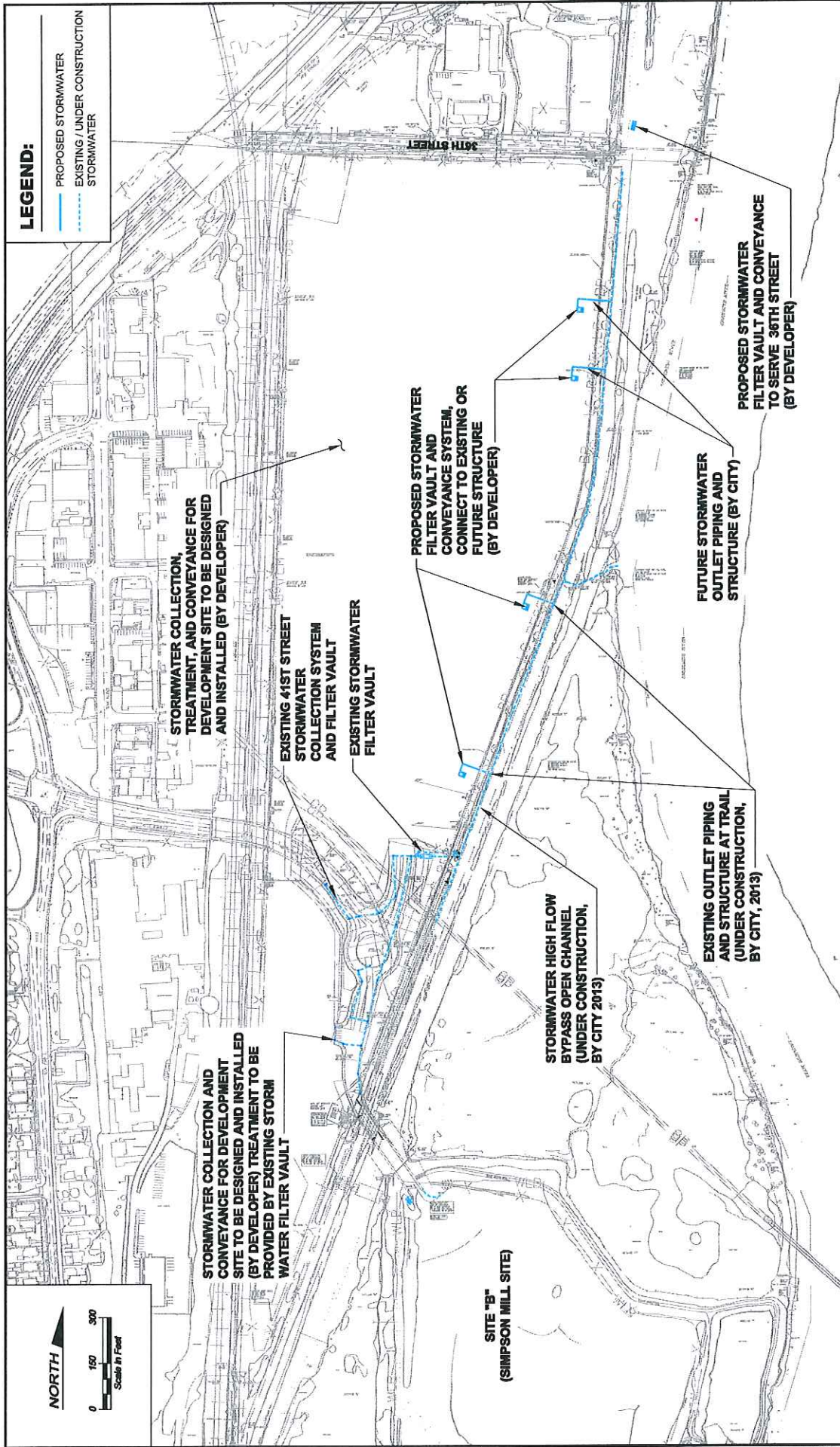
**CITY OF EVERETT
PUBLIC WORKS**
ENGINEERING & PUBLIC
SERVICES DEPARTMENT

RIVERFRONT DEVELOPMENT
RAILROAD CORRIDOR TRAIL

TRAIL DETAILS

Sheet No. 7 of 10

EXHIBIT 3
TO SEVENTH AMENDMENT TO PDA
[SEWER AND STORMWATER IMPROVEMENTS]



Figure

2

Stormwater Facility Plan

Everett Riverfront Development
April 2013

**CITY OF EVERETT
PUBLIC WORKS**
ENGINEERING & PUBLIC
SERVICES DEPARTMENT



BHC CONSULTANTS, LLC
1601 Fifth Avenue, Suite 500
Seattle, WA 98101
206.505.3400
206.505.3406 (fax)
www.bhcconsultants.com



PROJECT: 1601 FIFTH AVENUE DEVELOPMENT (REVISED) 10-13-13 09:50 PM FOR 1601 FIFTH AVENUE DEVELOPMENT (REVISED) 10-13-13 09:50 PM
DRAWN BY: JLM
CHECKED BY: JLM
DATE: 10-13-13 09:50 PM

EXHIBIT 4
TO SEVENTH AMENDMENT TO PDA
[FORM OF EASEMENT AMENDMENT]

CITY OF EVERETT
REAL PROPERTY MANAGER
3200 Cedar Street
Everett, WA 98201

Grantor: POLYGON

Grantees: CITY OF EVERETT

☒ Additional on Page 2

Legal Description
Additional in Exhibit B
and D

Assessor's Tax Parcel ID #:

Reference Nos. of Documents Released or Assigned: N/A

RECITALS

B. The City and Grantor's predecessors-in-interest, OM Everett Inc., a Washington corporation, and OMH Transfer Agent, LLC, a Delaware limited liability company, are parties to the Grant of Easement for Existing Landfill Systems and Related Utilities dated May 14, 2008 and recorded under Snohomish County recording number 200805140923 (the "***Existing Landfill Systems Easement***"), under which the City was granted a utility easement on Grantor's Property.

B. Grantee has constructed and will be constructing certain other utility improvements on Grantor's Property related to the landfill gas management system, which include the LFG blower and other improvements (all such improvements, the "**LFG Improvements**"). The location of the LFG Improvements is shown on the attached Exhibit C and is legally described in the attached Exhibit D (such area, the "**LFG Area**"). The parties desire to amend the Existing Landfill Systems Easement to include the LFG Area and the LFG Improvements.

AGREEMENTS

In consideration of the mutual promises set forth herein and in the Existing Landfill Systems Easement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Easement Amendment.** The Existing Landfill Systems Easement is hereby amended so that the Easement Area also includes the LFG Area and so that the Easement Improvements also include the LFG Improvements. For the purposes of the Existing Landfill Systems Easement, the LFG Improvements are part of the Existing Landfill Gas Management System.
2. **Defined Terms.** Unless otherwise defined in this Amendment, all capitalized terms have the meaning assigned to them in the Existing Landfill Systems Easement.
3. **Full Force and Effect.** Except as revised by this Amendment, the Existing Landfill Systems Easement remains unchanged and in full force and effect.

[REMAINDER OF PAGE BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGES]

Dated as of the date first set forth above.

GRANTOR:

POLYGON _____

a _____

By _____

Name _____

Its _____

STATE OF WASHINGTON }
COUNTY OF SNOHOMISH } ss.

On this day personally appeared before me _____, to
me known to be the _____ of _____, the
Washington limited liability company that executed the foregoing instrument, and
acknowledged such instrument to be the free and voluntary act and deed of such
corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she]
was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____,
201__.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

GRANTEE:

CITY OF EVERETT
a Washington municipal corporation

By _____
Ray Stephanson, Mayor

APPROVED AS TO FORM:

James D. Iles, City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

} ss.

On this day personally appeared before me Ray Stephanson, to me known to be the Mayor of the City of Everett, the Washington municipal corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____,
201__.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

EXHIBIT A
TO AMENDMENT TO EASEMENT
GRANTOR'S PROPERTY

[to be attached]

EXHIBIT B
TO AMENDMENT TO EASEMENT
MAP OF GRANTOR'S PROPERTY
[to be attached]

EXHIBIT C
TO AMENDMENT TO EASEMENT
DRAWING OF LFG AREA



EXHIBIT D
TO AMENDMENT TO EASEMENT
LEGAL DESCRIPTION OF LFG AREA
[to be attached]